

: BEFORE THE

: HOWARD COUNTY

: BOARD OF APPEALS

: HEARING EXAMINER

: BA Case No. 08-041V

[illegible]

On September 29, 2008, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Sienna Corporation for variances to reduce building, use, and parking setbacks for a storage facility and parking in an M-1 (Manufacturing: Light) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

Richard Talkin represented the property owner. Robert Vogel testified in support of the petition. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find as follows:

1. The subject property is situated on the north side of US 1 about 700 feet northeast of MD 100. It is located in the 1st Election District and identified on Tax Map 37, Grid 24, as Parcel 189. The site is currently known as 7076 Washington Boulevard (the "Property").

2. The 2.37-acre Property is irregularly shaped and was previously cleared and graded for outdoor storage purposes. A short paved driveway extends into the Property from an adjoining

access road. A stream and floodplain are located in the back (north) section, causing a steep drop in the site's elevation. There is also a relatively steep upward slope upward to US 1 in the front section.

3. Vicinal Properties. The adjacent properties on the north side of US 1 are also zoned M- 1. To the west of the Property is Parcel 186, a vacant wooded parcel owned by the State Roads Commission. The property to the north is the wooded Parcel 185, which the Howard County Department of Recreation and Parks owns. Further to the north and along the narrow internal access road is a vacant, dilapidated frame single-family detached dwelling (on the west side) and an occupied brick single-family detached dwelling (on the east side). Across the public access road to the east and northeast of the Property is the bulk of Parcel 191, which is largely unimproved except for an outdoor sign located approximately 1,000 feet northeast of the Property. A small, detached triangular portion of Parcel 191 adjoins the southeast side of the Property. To the east and southeast of the Property, across US 1, are existing developed properties zoned CE-CLI. Parcel F is the site of the Center for Social Change facility, and Parcel A-I is the site of an existing warehouse. To the southwest of the Property is the US 1 interchange with MD 100.

4. Roads. US 1 in front of the Property has a wide, variable right of way, dual northbound and southbound lanes, a northbound exit lane from westbound MD 100, and a southbound exit lane onto westbound MD 100. The road onto which the Property has access is relatively narrow, and has a variable width pavement, with no posted speed limit. The estimated sight distance from the current driveway entrance is more 500 feet to the northwest and approximately 190 feet to the northeast to the intersection with US 1. Precise sight distance measurements may only be

determined through a detailed sight distance analysis, however. There appears to be no sight distance issue at the signalized intersection with US 1.

According to data from the State Highway Administration, the traffic volume on US 1 north of MD 100 was 33,125 ADT (average daily trips) as of 2003.

5. Water and Sewer Service. The site will be served by public water and sewer facilities.

6. General Plan. The Property is designated Residential Areas and Redevelopment Corridors on the Policies Map 2000-2020 of the 2000 General Plan. US 1 is depicted as an Intermediate Arterial on the Transportation Map 2000-2020 of the 2000 General Plan. The access road is a local road.

7. Zoning History. Three development approvals have previously been approved for the Property, two of which included administrative adjustments to setback requirements, based on unique conditions. In BA Case No. 00-049C, the Board of Appeals approved a special exception for a gasoline service station and uses, which expired in 2004 when the Hearing Authority denied an extension request.

The Petitioner is seeking relief from Section 122.D.2.a for a five-story self-storage building, parking lot, and vehicle circulation area. The proposed building would be sited close to the US frontage, this being the widest buildable area. To support this development, the Petitioner is requesting variances to (1) reduce the 50-foot structure and use setback from US 1 to 15 feet for a storage facility, (2) reduce the 50-foot structure and use setback from the State Highway Public Access Road to 30 feet for the construction of a storage facility, and (3) reduce the 30-foot parking setback from the State Highway Public Access Road up to 10.4 feet for three parking spaces.

8. Robert Vogel, the project engineer, testified to agreeing with and accepting the conclusions of the technical staff report ("TSR"). He also testified that the proposed building is intended to look like an office building. None of the loading or parking would be visible from the road, being sited to the rear of the Property. He also stated that portions of the Property's front and side acreage were taken for ROWs. Referring to the Variance Exhibit (Petitioner's Exhibit 1), he explained the proposed use would have less environmental impact than the previous approved variance. Additionally, the requested variances are 66% percent less in area than previously approved.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides that a variance may be granted only if all of the following determinations are made:

- (1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.
- (2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.
- (3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.
- (4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variances comply with Section 130.B.2.a(1) through (4) and therefore may be granted.

1. The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A "practical difficulty" is shown when the strict letter of the zoning regulation would "unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome." *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

In this case, the Property's irregular shape, topography, and environmental conditions, including streams, floodplain, and required buffers, are unique physical conditions. I therefore conclude the Property's unique shape, topography, and environmental conditions cause the Petitioner practical difficulties in complying with the setback requirements, in accordance with Section 130.B.2.a(1).

2. The proposed development will be designed to resemble an office building and is consistent with the types of development intended along the US 1 corridor based on the Route 1 Manual. Although the building will be 49 feet from the pavement of US 1, a buffer area will be retained. According to the TSR, it is not anticipated that the encroachments will affect the undeveloped property to the northwest, the public access road having an exceptionally wide ROW. I therefore conclude the granting of the variances will not alter the essential character of the neighborhood or district in which the Property is located, will not substantially impair the

appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with Section 130.B.2.a(2).

3. The property owner, Rose Hill Farm, LLC, purchased the property in its current condition. The practical difficulties in complying strictly with the setback regulations arise from the Property's shape, topography and environmental constraints, and were not created by the Petitioner, in accordance with Section 130.B.2.a(3).

4. The requested variances apply only to small sections of the Property, and in total area is much less than previously approved variances, according to the Petitioner's variance plan. Within the intent and purpose of the regulations, then, the variances are the minimum necessary to afford relief, in accordance with Section 130.B.2.a(4).

ORDER

Based upon the foregoing, it is this **15th day of October 2008**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Siena Corporation for variances from Section 122.D.2.a to (1) reduce the 50-foot structure and use setback from US 1 to 15 feet for a storage facility, (2) reduce the 50-foot structure and use setback from the State Highway Public Access Road to 30 feet for the construction of a storage facility, and (3) reduce the 30-foot parking setback from the State Highway Public Access Road up to 10.4 feet for three parking spaces are hereby **GRANTED**;

Provided, however, that the variances will apply only to the self-storage and parking spaces being requested and not to any new structures, uses, or change in uses on the subject property or to any additions thereto.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**

MICHELE L. LEFAIVRE
Michele L. LeFaivre

Date Mailed: 10/16/08

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.